RECENT CASES

BILLS AND NOTES—PAYMENTS—RIGHT TO RECOVER.—ISAACS v. KOBRE, 145 N. Y. S., 919.—Defendant purchased a note on June third, which was payable on May third of the same year. The note being unpaid, defendant informed plaintiff, an indorser, that the note was payable on June third, the day of the purchase. As both parties labored under a mutual mistake, the plaintiff paid the note, but on receiving it discovered the mistake. *Held,* as the plaintiff had been discharged of his liability by the failure of the holder to protest it when not paid when due, the plaintiff might recover his payment.

Where the indorser paid a check without knowledge of the facts which discharged him from all liability, he may recover the money so paid. *Martin v. Campbell,* 160 N. Y. 190. If an indorser of a note relying upon a notice received from a notary public that the note has been dishonored, and being called upon to pay the note, when in fact a proper demand has not been made upon the maker, such payment is made under a mistake of fact and the money so paid may be recovered. *Talbot v. National Bank of Commonwealth,* 129 Mass. 67.

COURTS—OPINIONS—"DICTUM."—DUNCAN v. BROWN, 139 PAC. (N. M.) 140.—*Held,* wherever a question fairly arises in the course of a trial, and there is a distinct decision of such question, the ruling of the court in respect thereto cannot be called mere *dictum.*

Remarks in an opinion, not necessary to the decision of the case, are *dicta,* and have no binding force. *In re Klock,* 51 N. Y. S. 879, a judicial opinion on a point not necessary to the decision of the question before the court is *dictum,* and has no binding force. *People v. Leubischer,* 54 N. Y. S. 869. The determination of a matter which is involved in the litigation and discussed at the bar is not mere *dictum,* even though it is only indirectly involved in the discussion of the question on which the case turns. *Lancaster County v. McDonald,* 73 Neb. 453. Every proposition of law enunciated, if actually involved in the facts is to be taken as a principal of law *stare decisis. Maddox v. U. S.,* 5 Ct. Cl. 372.

FRAUDS—STATUTE OF—PARTY TO BE CHARGED.—KAISER v. JONES, 163 S. W. (KY).—Plaintiff contracted to sell land to the defendant but the defendant alone signed the contract and the vendor sued for damages for the breach. Held, that the words "the party to be charged" in the statute of frauds means the vendor, and if the vendee alone has signed no action can be maintained on the contract.

In practically all the states the words "the party to be charged" have been interpreted to mean the defendant in the action, whether he is the vendor or the vendee. *Heflin v. Milton,* 69 Ala. 354; *Hodges v. Kowling,* 58 Conn. 12; *Old Colony R. R. Co. v. Evans,* 6 Gray, 25; *Simmes v. Killian,* 34 N. C. 252. But in Kentucky and Tennessee it has always been held that the agreement of the plaintiff who hasn't signed, not being binding, forms no consideration for the promise of the defendant and there is a want of mutuality which can only be avoided by interpreting the words "party to be charged" to mean the vendor. *City of Murray v. Crawford,* 138 Ky. 25; *Usher v. Flood,* 83 Ky, 552; *Frazer v. Ford,* 2 Head (Tenn.) 464. And where the vendor hasn't signed, the bringing of the action doesn't remedy the defect. *Frazer v. Ford, supra.* For the same reason New York, Wisconsin, Nebraska, Michigan, Montana, Pennsylvania, and Texas have thought it necessary to change their statutes to read "grantor or lessor" instead of "party to be charged." All these states proceed on the theory that the purpose of the statute is to protect the holders of title to realty rather than the vendee. *City of Murray v. Crawford, supra.* But the great majority of the states hold that the vendee is to be equally protected because there is as much danger of an exorbitant price being imposed on him by perjury as there is of a contract to sell being similarly imposed on the owner of the land. *Simmes v. Killian, supra; Harper v. Goldschmidt,* 156 Cal. 245. So the holding of the principal case and the reasoning upon which it is based are contrary to the great weight of authority, but in accord with the precedents of their own state and Tennessee.

LIMITATIONS OF ACTIONS—OBSTRUCTION OF WATER COURSE.—TAYLOR V. NEWMAN, *et* 1. 139 P. (KAN.) 369.—In an action for trespass to real property, where the defendant had built and maintained a permanent obstruction in the channel of a stream which had for two years prior to this action so diverted the flow of water so as to cause the plaintiff's land on the opposite shore to be carried away, it was *held* that the cause of action was barred by the two-year statute of limitations.

There is perhaps no subject in the law about which there is greater conflict than the application of the statute of limitations to these cases. *Board of Directors of St. Francis Lev. Dist. v. Barton,* 92 Ark. 406. The weight of authority, however, seems to be that where the nuisance is of a permanent character and its continuance is necessarily an injury, the damage is original, may be fully compensated for in one action, and the statute begins to run from the time the structure is erected. *Board of Dir. St. Francis Lev. Dist. v. Barton, supra; Parker v. Atchison,* 58 Kan. 29; *St. Louis I. M. & S. R. Co. v. Morris,* 35 Ark. 622. This was held even where the injury was at irregular intervals. *Gulf, C. & S. R. Co. v. Mosely,* 161 Fed. 72. But where the full extent of the injury cannot be foreseen at the time the obstruction is erected, the statute doesn't begin to run until the injury is apparent and then the whole recovery must be had in one action. *Buntin v. Chicago, R. I. & R. R. Co.,* 41 Fed. 774. Yet in a few cases